



City of Huntington Beach Planning and Building Department
STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Ricky Ramos, Senior Planner *RZ*
DATE: November 22, 2011

SUBJECT: **ZONING TEXT AMENDMENT NO. 09-002 (WIRELESS COMMUNICATION FACILITIES – Continued From November 8, 2011)**

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

PROPERTY

OWNER: Not applicable

LOCATION: Citywide

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

Zoning Text Amendment No. 09-002 is scheduled for a second study session on November 22, 2011. The study session will focus on the proposed recommendations and changes to the ordinance, the legal issues analyzed in the City Attorney's memo and to solicit any potential suggested changes to the proposed ordinance by the Planning Commission. The first three attachments from the November 8, 2011 study session staff report are attached once again as well as all the late communications and the City Attorney's response to the Wireless Industry comments.

ATTACHMENTS:

1. Legislative Draft HBZSO Section 230.96 - ZTA No. 09-002 (October 2011)
2. Proposed HBZSO Section 230.96 (staff annotated changes)
3. Existing HBZSO Section 230.96 (staff annotated changes)
4. Late Communications - November 8, 2011 Study Session
Wireless Infrastructure Association (PCIA) dated November 2, 2011
Dianne Larson dated November 8, 2011
Don McFarland dated November 8, 2011
League of California Cities, Challenges and Solutions to Managing Quality Cell Service dated November 8, 2011
5. City Attorney's Response to Wireless Industry Comments Dated November 14, 2011

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LEGISLATIVE DRAFT

City of Huntington Beach Zoning Text Amendment No. 09-002 (October 2011)

230.96 Wireless Communication Facilities

- A. Purpose. ~~The purpose of this~~ This Section of the Zoning Code is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life by regulating the location, height and physical characteristics and provide for orderly and efficient placement of Wireless Communications Facilities in the City of Huntington Beach.
(3779-10/07)

Because of the potential negative aesthetic impacts of Wireless Communications Facilities, including visual blight and diminution of property value, the City endeavors to locate antennas within commercial, industrial and other non-residential zones, screen them from view, and encourage co-location with other Wireless Communication Facilities. However, the Federal Telecommunications Act, specifically 47 U.S.C. Section 332(c)(7), preempts local zoning where a Wireless Facility is necessary to remedy a significant gap in the Wireless Provider's service. Consequently, where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations. A myriad of factors are involved in determining if a gap is significant, such as: whether the gap affects a commuter highway; the nature and character of the area and the number of potential users affected by the alleged lack of service; whether the signal is weak or nonexistent, and whether the gap affects a commercial district. Consequently, the City will require scientific evidence from an expert in the field demonstrating the existence of a significant gap in service, and a lack of feasible alternative sites. The applicant will be required to pay for the cost of said expert opinion.

- B. Definitions. For the purpose of this sSection, the following definitions for the following terms shall apply: (3568-9/02)
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a ~~wireless communication facility.~~ Wireless Communication Facility. (3568-9/02)
 2. ~~—2.—~~ Co-Location or Co-Located. The location or placement of multiple ~~antennas~~ Wireless Communication Facilities which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)

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3. — ~~3. Completely Stealth. Any Wireless Communication Facility.~~ Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to, architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend in with the existing building, flagpoles, church steeples, fire towers, and flag poles and light standards. ~~(3568-9/02, 3779-10/07)~~ of a typical diameter.
4. — ~~4. Ground Mounted Facility.~~ Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
5. — ~~5. Microwave Communication.~~ The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
6. — ~~6. Modified Facility.~~ An existing Wireless Communication Facility where the antennas and/or supporting structure are proposed to be altered in any way from their existing condition, including like-for-like replacement but excluding co-location.
- ~~6.7. Pre-existing Wireless Facility.~~ Any wireless communication facility Wireless Communication Facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities wireless antennas that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
8. — ~~7. Public Right-of-Way~~ The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways, private streets with public access easements within the City's boundaries, and City owned properties, as they now exist or hereafter will exist.
- ~~7.9. Roof Mounted.~~ Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
- ~~8.10. — 8. Stealth Facility or Techniques.~~ Any wireless communication facility Wireless Communication Facility, including any appurtenances and equipment, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition. Examples of completely stealth facility Stealth Technique include, but are not limited to, monopoles/monopines. (3568-9/02)
- ~~9.~~
- ~~9.11. Utility Mounted.~~ Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational facility lighting, or any other utility which meets the purpose and intent of this definition. ~~(3568-9/02, 3779-10/07)~~
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~~10.12.~~ Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)

~~11.13.~~ —11. Wireless Communication Facility or Facility, or Wireless Antenna. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02, 3779-10/07)

C. Applicability.

~~1. All wireless communication facilities~~ This ordinance shall apply to all Wireless Communication Facilities which are erected, located, placed, ~~constructed~~ or modified within the City of Huntington Beach ~~shall comply with these regulations provided that:~~ (3568-9/02, 3779-10/07).

~~a. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines.~~ (3568-9/02, 3779-10/07)

~~b. All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies.~~ (3568-9/02)

~~c.~~ D. Exceptions. The following Wireless Communication Facilities shall be exempt from this Ordinance.

~~1. Any facility, which is subject to a previously approved and valid conditional use permit entitlement, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. Modifications. However, modifications outside the scope of the valid conditional use permit will require submittal entitlement or any modification to an existing facility that does not have a previously approved and valid entitlement is subject to the requirements of a Wireless Permit application. this ordinance.~~ (3568-9/02, 3779-10/07)

~~2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements.~~ (3568-9/02, 3779-10/07)

~~a.~~

~~2.~~ Any antenna structure that is one meter (39.37 inches) or less in diameter and that is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02).

~~3.~~ ~~b.~~ Any antenna structure that is two meters (78.74 inches) or less in diameter located in

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~~_____ commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)~~

4. ~~_____ e. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)~~

~~_____ d. Any antenna structure that is designed to receive radio broadcast transmission. (3568-9/02)~~

~~_____ e5. Any antenna structure used by authorized amateur radio stations licensed by the FCC. (3568-9/02)~~

~~D. _____~~

E. Process to Install and Operate Wireless Permit Required-Communication Facilities.

~~No wireless communication facility Facility shall be installed anywhere in the City without submission of first securing either a Wireless Permit or a Conditional Use Permit as required below.~~

~~1. Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as. The applicant shall apply to eliminate any gap in service and also include the Planning and Building Department for a Wireless Permit by submitting a completed Wireless Permit Application ("Application") and paying all required fees. The Application shall be in the form approved by the Director, and at a minimum shall provide the following information: (3779-10/07)~~

~~1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage. (3779-10/07)~~

~~a. 2. Compatibility Precise location of the Facility.~~

~~a.b. Evidence that the Facility is compatible with the surrounding environment or that the facilities are facility is architecturally integrated into a structure. (3779-10/07)~~

~~b.c. 3. Screening or camouflaging Evidence that the facility is screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet). (3779-10/07)~~

~~4. Massing~~

~~e.d. Evidence that the massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3779-10/07)~~

~~d.e. 5. No Evidence that no portion of a wireless communication facility shall project the Facility will encroach over property lines. (3779-10/07)~~

~~6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size: (3779-10/07)~~

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- ~~_____ a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review: (3779-10/07)~~
 - ~~_____ i. All transmit and receive frequencies; (3779-10/07)~~
 - ~~_____ ii. Effective Radiated Power (ERP); (3779-10/07)~~
 - ~~_____ iii. Antenna height above ground, and (3779-10/07)~~
 - ~~_____ iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3779-10/07)~~
 - ~~_____ f. _____ b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation Property owner authorization or evidence of fee ownership of property where the Facility will be installed.~~
 - ~~_____ g. License, lease, franchise, or other similar agreement from the City for any Facility to be placed over, within, on, or beneath City property.~~
 - ~~_____ h. Locations of all other Wireless Antennas within 1,000 feet of a proposed ground mounted facility causing interference with the City's. Co-location of ground mounted facilities immediately shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.~~
 - ~~_____ i. Any other relevant information as required by the Director of Planning and Building.~~
- ~~_____ The Planning and Building Department will initially review and determine if the Application is complete. The City may deem the Application incomplete and require re-submittal if any of the above information is not provided.~~
- ~~_____ 2. Director Approval. Following submittal of a complete Application, the City will determine whether the Facility may be approved by the Director or whether a Conditional Use Permit or other entitlement is required. Wireless Permit applications will be processed based upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07) location and type of antennas defined in herein. Although said classifications are assigned at project intake, a re-evaluation of antenna classifications may occur at any point in the process including at the time of review by the Director, Zoning Administrator, Planning Commission or City Council.~~
- ~~_____ c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3779-10/07)~~
 - ~~_____ d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3779-10/07)~~

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~~_____ e. The applicant shall insure~~ A Facility not subject to any other discretionary approval may be administratively approved by the Director by issuing a Wireless Permit if it is:

- a. Co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights, and employs Stealth Techniques such that the co-located Wireless Facility is compatible with surrounding buildings and land uses; or

A modified Facility that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. — (3779-10/07)

E. Additional Permit Required:

- 1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: — (3779-10/07)

a.b.a. — Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, plus up to an additional 10 feet of height as permitted in Section 230.72 and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3779-10/07)

b. Completely stealth facilities A Facility that complies with the base district height limit; or — (3779-10/07)

b.c.c. — Facilities in non-residential districts that are in compliance with the maximum building plus up to an additional 10 feet of height as permitted within the zoning district; in Section 230.72, is Completely Stealth, and — (3779-10/07) is not ground or utility mounted:

_____ i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or — (3779-10/07)

_____ ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or — (3779-10/07)

_____ iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. — (3779-10/07)

_____ 2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: — (3779-10/07)

_____ a. Exceeding the maximum building height permitted within the zoning district; or

_____ b. Visible from beyond the boundaries of the site at eye level (six feet); or

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~~_____ c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or~~

~~_____ d. Not designed to be architecturally compatible with surrounding buildings and land uses;~~

~~_____ e. As~~ The Director may require conditions of approval of the Facility in order to minimize adverse health, safety and welfare impacts to the community.

A decision of the Director to grant a Wireless Permit shall become final ten (10) days following the date of the decision unless an appeal to the Planning Commission is filed as provided in Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

The Director shall issue findings of approval that the Facility meets the above criteria and is not a detriment to the health, safety and welfare of the community.

3. Zoning Administrator Approval. In the event the Director determines that the applicant does not meet the requirements for Director approval of a Wireless Permit, then the applicant shall apply for a Conditional Use Permit (CUP) to the Zoning Administrator pursuant to Chapter 241 of the HBZSO. Notwithstanding any other provisions of the HBZSO, any new ground or utility mounted wireless facilities shall be required to obtain a CUP. CUP applications shall also include the same information required under subsection E.1.

The Zoning Administrator may require, as a condition of approval of the Conditional Use Permit, CUP that the Zoning Administrator shall applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction:—(3779-10/07)

~~i. a. Completely Stealth installations;—(3779-10/07)~~

~~_____ ii~~

~~_____ b. Stealth Techniques;~~

~~_____ c. Co-location and locating fFacilities within existing building envelopes; (3779-10/07)~~

~~_____ iii. Minimizing visual prominence through colorization~~

~~_____ d. Colorization or landscaping;—(3779-10/07) to minimize visual prominence; and/or~~

~~_____ iive. Removal or replacement of fFacilities that becoomeare obsolete.—(3779-10/07)~~

~~3.~~ Further conditions of approval of a facility CUP may be imposed as provided in Chapter 241 of the HBZSO. The Zoning Administrator's decision may be appealed to the Planning Commission in accordance with Chapter 248 of the HBZSO.

4. Design Review. Design review shall be required for any wireless communication facilities Wireless Communication Facilities pursuant to the HBZSO as well as those located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, way and on or within 300 feet of a residential district, and or use in areas designated by the City Council. Design.

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Notwithstanding any other provisions of the HBZSO, design review is not required for wireless communication facilities that comply with the requirements of subsection 4-E.2 (Director Approval) above and have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.

F. Applicant May Assert Federal Preemption At Time of Appeal To Planning Commission.

1. If the decision on the Wireless Permit or Conditional Use Permit is appealed (either by applicant or an aggrieved party) to the Planning Commission, the Applicant may assert that Federal Law preempts the City from denying the application because denial would effectively prohibit Wireless Service. The applicant shall pay a Denial of Effective Service appeal fee in an amount to be established by City Council Resolution, which amount shall be the estimated cost for the City to retain an independent, qualified consultant to evaluate any technical aspect of a proposed Wireless Communications Facility, including, but not limited to, issues involving whether a significant gap in coverage exists. A Denial of Effective Service appeal must be submitted prior to the expiration of the appeal period for a Wireless Permit or Conditional Use Permit.

2. The Director shall establish the form of the Denial of Effective Service appeal. At a minimum, the Applicant shall provide the following information as part of its appeal:

In order to prevail in establishing a significant gap in coverage claim the applicant shall establish at minimum the following based upon substantial evidence:

- a. Evidence demonstrating the existence and nature of a significant gap in service in the vicinity of the proposed Facility, including but not limited to whether the gap pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.
- b. Evidence demonstrating that the applicant has pursued other feasible sites for locating the Facility, but that they are unavailable on commercially practicable terms.
- c. Evidence demonstrating the radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region, and for the City of Huntington Beach.
- d. Radio frequency propagation maps demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- e. Radio frequency drive tests demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
- f. Reports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed Facility.
- g. Any proprietary information disclosed to the city or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law. In the event the applicant does not provide this information, the City may conclusively presume that no denial of effective service exists.

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All of the information noted above shall be submitted to the City within 30 days of the filing of the Denial of Effective Service appeal unless an extension is granted by the Director.

3. The Denial of Effective Service appeal shall be considered concurrently with the Wireless Permit or CUP appeal hearing before the Planning Commission. Prior to the scheduling of the public hearing on the Wireless Permit or CUP appeal, the City Attorney shall be authorized to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicant's denial of effective service claims.

G. Wireless Communication Facility Standards: The following standards shall apply to all wireless communication facilities: ~~—(3779-10/07)~~

~~—1. Aesthetics:~~

- ~~—a. Facility Screening:~~ All screening used in conjunction with a wall or roof mounted ~~facility~~ Wireless Antenna shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground or utility mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)

- ~~—b2. Equipment/Accessory Structures:~~ All equipment associated with the operation of the ~~facility~~ Wireless Antenna, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located, and Section 230.76. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. ~~If chain link is used, then it must be vinyl-coated fencing and not include barbed wire are prohibited.~~ (3568-9/02)

- ~~—e3. General Provisions:~~ All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

- ~~—24. Building Codes:~~ To ensure the structural integrity of ~~wireless communication facilities~~ Wireless Communication Facilities, the owners of a ~~facility~~ shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)

- ~~—3. Conditions of Approval:~~ Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)

- ~~—45. Co-Location:~~ Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.

6. Federal and State Requirements: All Wireless Communication Facilities must meet or exceed current federal and state laws, standards and regulations of the FCC, and any other agency of the state ~~federal or federal-state~~ government with the authority to regulate ~~wireless communication facilities~~ Wireless Communication Facilities. (3568-9/02)

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7. Interference: To eliminate interference, at all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. — 5 The applicant shall cease operation of any Wireless Antenna causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)

8. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)

— 69. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility. Wireless Antenna. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)

— 710. Monitoring: ~~For all wireless communication facilities, the~~ The applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02, 3779-10/07)

— 811. Signs: ~~The facility~~ Wireless Antenna shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage.— (3568-9/02, 3779-10/07)

— (3568-9/02, 3779-10/07)

— 9. Facilities on Public Property: ~~Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.~~ (3779-10/07)

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12. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Wireless Antenna. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning and Building Departments may be required. (3779-10/07)

— 11. — 13. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07)

— (3779-10/07)

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H. Facilities on Public Property. Any Wireless Communication Facility to be placed over, within, on, or beneath City property shall obtain a license, lease, franchise, or other similar agreement from the City prior to issuance of a Wireless Permit or Conditional Use Permit. (3779-10/07)

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I. Facilities in the Public Right-of-Way. Any wireless communication facility ~~Wireless Communication Facility~~ to be placed over, within, on or beneath the public right-of-way shall comply with the following standards: ~~obtain an encroachment permit from the Department of Public Works and comply with the Undergrounding Ordinance (Chapter 17.64 of HBMC).~~ (3568-9/02, 3779-10/07)

- ~~a. Any wireless communication facilities to be constructed on or beneath the public right of way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state franchised telephone corporation exempt from local franchise requirements.~~ (3568-9/02, 3779-10/07)
- ~~b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights of way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit.~~ (3568-9/02, 3779-10/07)
- ~~c. The City Engineer shall approve the location and method of construction of all facilities located within public rights of way and the installation of facilities within the public rights of way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time.~~ (3568-9/02, 3779-10/07)
- ~~d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional use permits, and all applicable fees.~~
(3568-9/02, 3779-10/07)
- ~~e. Any wireless communication facility installed, used or maintained within the public rights of way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right of way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program.~~ (3568-9/02, 3779-10/07)
- ~~f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project.~~
(3568-9/02, 3779-10/07)
- ~~g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state wide franchise to use the public rights of way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right of way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state wide franchise to install a wireless communications facility in the public right of way.~~ (3568-9/02, 3779-10/07)

13. J. Facility Removal.

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a. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

~~b~~K. Cessation of Operation:

1. Abandonment. Within thirty (30) calendar days of cessation of operations of any ~~wireless communication facility~~ Wireless Communication Facility approved under this ~~s~~Section, the operator shall notify the ~~Planning Department~~ Director in writing. The ~~facility~~ Wireless Antenna shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

— 1. ~~a.~~ The City has determined that the operator has resumed operation of the ~~wireless communication facility~~ Wireless Communication Facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

— 2. ~~b.~~ The City has received written notification of a transfer of ~~wireless communication operator~~ the Wireless Communication Facility. (3568-9/02, 3779-10/07)

— ~~e.~~ 2. City Initiated Abandonment: A ~~facility~~ Wireless Antenna that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the ~~facility~~ Wireless Antenna and the owner(s) of the premises upon which the ~~facility~~ antenna is located. Such notice may be delivered in person, or mailed to the address(es) stated on the ~~facility~~ permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)

— ~~d.~~ 3. Removal of Abandoned Facility Wireless Antenna: The operator of the ~~facility~~ Wireless Antenna and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the ~~facility~~ Wireless Antenna in its entirety and restore the premises, or (2) provide the ~~Planning Department~~ Director with written objection to the City's determination of abandonment. (3779-10/07)

— ~~a.~~ Any such objection shall include evidence that the ~~facility~~ Wireless Antenna was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the ~~f~~Facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

— ~~e.~~ Removal by City: ~~b.~~ At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned ~~facility~~ Wireless Antenna and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed ~~facility~~ Antenna (or any part thereof). The owner of the premises upon which the abandoned ~~facility~~ Antenna was located, and all prior operators of the ~~facility~~ Antenna, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed ~~facility~~ Wireless Antenna, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02, 3779-10/07)

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PROPOSED HBZSO SECTION 230.96

City of Huntington Beach
Zoning Text Amendment No. 09-002
(October 2011)

R - REVISED
E - EXISTING
N - NEW

230.96 Wireless Communication Facilities

- N A. **Purpose.** This Section of the Zoning Code is to protect public safety, general welfare, and quality of life by regulating the location, height and physical characteristics and provide for orderly and efficient placement of Wireless Communications Facilities in the City of Huntington Beach.

Because of the potential negative aesthetic impacts of Wireless Communications Facilities, including visual blight and diminution of property value, the City endeavors to locate antennas within commercial, industrial and other non-residential zones, screen them from view, and encourage co-location with other Wireless Communication Facilities. However, the Federal Telecommunications Act, specifically 47 U.S.C. Section 332(c)(7), preempts local zoning where a Wireless Facility is necessary to remedy a significant gap in the Wireless Provider's service. Consequently, where the City determines that the Facility does not satisfy City planning and zoning standards, the Wireless Provider may then choose to establish Federal preemption because (i) a significant gap in wireless coverage exists, and (ii) there is a lack of feasible alternative site locations. A myriad of factors are involved in determining if a gap is significant, such as: whether the gap affects a commuter highway; the nature and character of the area and the number of potential users affected by the alleged lack of service; whether the signal is weak or nonexistent, and whether the gap affects a commercial district. Consequently, the City will require scientific evidence from an expert in the field demonstrating the existence of a significant gap in service, and a lack of feasible alternative sites. The applicant will be required to pay for the cost of said expert opinion.

- E B. **Definitions.** For the purpose of this Section, the following definitions for the following terms shall apply: (3568-9/02)

- N 1. **Accessory Structure.** Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a Wireless Communication Facility. (3568-9/02)
2. **Co-Location or Co-Located.** The location or placement of multiple Wireless Communication Facilities which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
3. **Completely Stealth.** Any Wireless Communication Facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to, architecturally screened roof mounted antennas, façade mounted antennas treated as architectural elements to blend in with the existing building, church steeples, fire towers, and flag poles and light standards of a typical diameter.

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4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
6. Modified Facility. An existing Wireless Communication Facility where the antennas and/or supporting structure are proposed to be altered in any way from their existing condition, including like-for-like replacement but excluding co-location.
7. Pre-existing Wireless Facility. Any Wireless Communication Facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted wireless antennas that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
8. Public Right-of-Way. The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways, private streets with public access easements within the City's boundaries, and City owned properties, as they now exist or hereafter will exist.
9. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
10. Stealth Techniques. Any Wireless Communication Facility, including any appurtenances and equipment, which is designed to blend into the surrounding environment. Examples of Stealth Technique include, but are not limited to, monopoles/monopines. (3568-9/02)
11. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational Facility lighting, or any other utility which meets the purpose and intent of this definition. (3568-9/02, 3779-10/07)
12. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)
13. Wireless Communication Facility or Facility or Wireless Antenna. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service.
- C. Applicability. This ordinance shall apply to all Wireless Communication Facilities which are erected, located, placed or modified within the City of Huntington Beach.

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P D. Exceptions. The following Wireless Communication Facilities shall be exempt from this Ordinance.

- P
1. Any Facility, which is subject to a previously approved and valid entitlement, may be modified within the scope of the applicable permit without complying with these regulations. However, modifications outside the scope of the valid entitlement or any modification to an existing facility that does not have a previously approved and valid entitlement is subject to the requirements of this ordinance.
 2. Any antenna structure that is one meter (39.37 inches) or less in diameter that is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof.

- E
3. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna.
 4. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot.
 5. Any antenna structure used by authorized amateur radio stations licensed by the FCC.

N E. Process to Install and Operate Wireless Communication Facilities.

P No Facility shall be installed anywhere in the City without first securing either a Wireless Permit or a Conditional Use Permit as required below.

1. Wireless Permit Application. The applicant shall apply to the Planning and Building Department for a Wireless Permit by submitting a completed Wireless Permit Application ("Application") and paying all required fees. The Application shall be in the form approved by the Director, and at a minimum shall provide the following information:

N a. Precise location of the Facility.

P b. Evidence that the Facility is compatible with the surrounding environment or that the facility is architecturally integrated into a structure.

c. Evidence that the facility is screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).

d. Evidence that the massing and location of the proposed facility are consistent with surrounding structures and zoning districts.

e. Evidence that no portion of the Facility will encroach over property lines.

N f. Property owner authorization or evidence of fee ownership of property where the Facility will be installed.

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- g. License, lease, franchise, or other similar agreement from the City for any Facility to be placed over, within, on, or beneath City property.
- h. Locations of all other Wireless Antennas within 1,000 feet of a proposed ground mounted facility. Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.
- i. Any other relevant information as required by the Director of Planning and Building.

The Planning and Building Department will initially review and determine if the Application is complete. The City may deem the Application incomplete and require re-submittal if any of the above information is not provided.

2. Director Approval. Following submittal of a complete Application, the City will determine whether the Facility may be approved by the Director or whether a Conditional Use Permit or other entitlement is required. Wireless Permit applications will be processed based upon the location and type of antennas defined in herein. Although said classifications are assigned at project intake, a re-evaluation of antenna classifications may occur at any point in the process including at the time of review by the Director, Zoning Administrator, Planning Commission or City Council.

A Facility not subject to any other discretionary approval may be administratively approved by the Director by issuing a Wireless Permit if it is:

- a. Co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights, and employs Stealth Techniques such that the co-located Wireless Facility is compatible with surrounding buildings and land uses; or
- b. A modified Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72 and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
- c. A Facility that complies with the base district height limit plus up to an additional 10 feet of height as permitted in Section 230.72, is Completely Stealth, and is not ground or utility mounted:

The Director may require conditions of approval of the Facility in order to minimize adverse health, safety and welfare impacts to the community.

A decision of the Director to grant a Wireless Permit shall become final ten (10) days following the date of the decision unless an appeal to the Planning Commission is filed as provided in Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

The Director shall issue findings of approval that the Facility meets the above criteria and is not a detriment to the health, safety and welfare of the community.

3. Zoning Administrator Approval. In the event the Director determines that the applicant does not meet the requirements for Director approval of a Wireless Permit, then the

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applicant shall apply for a Conditional Use Permit (CUP) to the Zoning Administrator pursuant to Chapter 241 of the HBZSO. Notwithstanding any other provisions of the HBZSO, any new ground or utility mounted wireless facilities shall be required to obtain a CUP. CUP applications shall also include the same information required under subsection E.1.

The Zoning Administrator may require, as a condition of approval of the CUP that the applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction:

- a. Completely Stealth installations;
- b. Stealth Techniques;
- c. Co-location and locating Facilities within existing building envelopes;
- d. Colorization or landscaping to minimize visual prominence; and/or
- e. Removal or replacement of Facilities that are obsolete.

Further conditions of approval of a facility CUP may be imposed as provided in Chapter 241 of the HBZSO. The Zoning Administrator's decision may be appealed to the Planning Commission in accordance with Chapter 248 of the HBZSO.

4. Design Review. Design review shall be required for any Wireless Communication Facilities pursuant to the HBZSO as well as those located on public right-of-way and on or within 300 feet of a residential district or use in the City.

Notwithstanding any other provisions of the HBZSO, design review is not required for Wireless Communication Facilities that may be approved by the Director pursuant to subsection E.2 (Director Approval) above and have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.

F. Applicant May Assert Federal Preemption At Time of Appeal To Planning Commission.

1. If the decision on the Wireless Permit or Conditional Use Permit is appealed (either by applicant or an aggrieved party) to the Planning Commission, the Applicant may assert that Federal Law preempts the City from denying the application because denial would effectively prohibit Wireless Service. The applicant shall pay a Denial of Effective Service appeal fee in an amount to be established by City Council Resolution, which amount shall be the estimated cost for the City to retain an independent, qualified consultant to evaluate any technical aspect of a proposed Wireless Communications Facility, including, but not limited to, issues involving whether a significant gap in coverage exists. A Denial of Effective Service appeal must be submitted prior to the expiration of the appeal period for a Wireless Permit or Conditional Use Permit.
2. The Director shall establish the form of the Denial of Effective Service appeal. At a minimum, the Applicant shall provide the following information as part of its appeal:

In order to prevail in establishing a significant gap in coverage claim the applicant shall establish at minimum the following based upon substantial evidence:

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- a. Evidence demonstrating the existence and nature of a significant gap in service in the vicinity of the proposed Facility, including but not limited to whether the gap pertains to residential in-building, commercial in-building coverage, in-vehicle coverage, and/or outdoor coverage.
 - b. Evidence demonstrating that the applicant has pursued other feasible sites for locating the Facility, but that they are unavailable on commercially practicable terms.
 - c. Evidence demonstrating the radio frequency signal strength transmission requirements and objectives that the applicant has established for the Southern California region, and for the City of Huntington Beach.
 - d. Radio frequency propagation maps demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
 - e. Radio frequency drive tests demonstrating actual transmission levels in the vicinity of the proposed Facility site, and any alternative sites considered.
 - f. Reports regarding the applicant's monthly volume of mobile telephone calls completed, not completed, dropped, handed-off, not handed-off, originated and not originated for the signal area to be covered by the proposed Facility.
 - g. Any proprietary information disclosed to the city or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law. In the event the applicant does not provide this information, the City may conclusively presume that no denial of effective service exists.

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All of the information noted above shall be submitted to the City within 30 days of the filing of the Denial of Effective Service appeal unless an extension is granted by the Director.

3. The Denial of Effective Service appeal shall be considered concurrently with the Wireless Permit or CUP appeal hearing before the Planning Commission. Prior to the scheduling of the public hearing on the Wireless Permit or CUP appeal, the City Attorney shall be authorized to issue administrative subpoenas to compel production of such documents, testimony and other evidence relevant to the applicant's denial of effective service claims.

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G. Wireless Communication Facility Standards. The following standards shall apply to all wireless communication facilities: (3779-10/07)

1. Screening. All screening used in conjunction with a wall or roof mounted Wireless Antenna shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground or utility mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
2. Equipment/Accessory Structures. All equipment associated with the operation of the Wireless Antenna, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located and Section 230.76. Screening materials and support structures

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- R housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. Chain link fencing and barbed wire are prohibited. (3568-9/02) R
- E 3. General Provisions. All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)
- R 4. Building Codes: To ensure the structural integrity of Wireless Communication Facilities, the owners of a Facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)
- N 5. Co-Location: Co-location of ground mounted facilities shall be required where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna.
- R 6. Federal and State Requirements: All Wireless Communication Facilities must meet or exceed current federal and state laws, standards and regulations of the FCC, and any other agency of the federal or state government with the authority to regulate Wireless Communication Facilities. (3568-9/02)
7. Interference: To eliminate interference, at all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any Wireless Antenna causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)
- E 8. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)
- R 9. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the Wireless Antenna. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)
10. Monitoring: The applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit.
11. Signs: The Wireless Antenna shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage. (3568-9/02, 3779-10/07)
12. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed Wireless Antenna. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning and Building Departments may be required. (3779-10/07)
- E 13. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate

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E Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07) E

R H. Facilities on Public Property. Any Wireless Communication Facility to be placed over, within, on, or beneath City property shall obtain a license, lease, franchise, or other similar agreement from the City prior to issuance of a Wireless Permit or Conditional Use Permit. (3779-10/07)

I. Facilities in the Public Right-of-Way. Any Wireless Communication Facility to be placed over, within, on or beneath the public right-of-way shall obtain an encroachment permit from the Department of Public Works and comply with the Undergrounding Ordinance (Chapter 17.64 of HBMC). (3568-9/02, 3779-10/07)

E J. Facility Removal. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

R K. Cessation of Operation.

1. Abandonment. Within thirty (30) calendar days of cessation of operations of any Wireless Communication Facility approved under this Section, the operator shall notify the Director in writing. The Wireless Antenna shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

a. The City has determined that the operator has resumed operation of the Wireless Communication Facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

b. The City has received written notification of a transfer of the Wireless Communication Facility. (3568-9/02, 3779-10/07)

2. City Initiated Abandonment: A Wireless Antenna that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the Wireless Antenna and the owner(s) of the premises upon which the antenna is located. Such notice may be delivered in person, or mailed to the address(es) stated on the permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)

3. Removal of Abandoned Wireless Antenna: The operator of the Wireless Antenna and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the Wireless Antenna in its entirety and restore the premises, or (2) provide the Director with written objection to the City's determination of abandonment. (3779-10/07)

a. Any such objection shall include evidence that the Wireless Antenna was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the Facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

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- ~~R~~ b. At any time after thirty-one (31) calendar days following the notice of abandonment, ~~R~~ or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned Wireless Antenna and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed Antenna (or any part thereof). The owner of the premises upon which the abandoned Antenna was located, and all prior operators of the Antenna, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed Wireless Antenna, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

EXISTING ORDINANCE

R - REVISED
D - DELETED
NC - NO CHANGE

5. The prices of items sold from a cart or kiosk must appear in a prominent, visible location in legible characters. The price list size and location shall be reviewed and approved by the Planning Director. (3249-6/95; 3525-2/02)
 6. The sale of alcoholic beverages shall be prohibited. (3249-6/95)
 7. The number of employees at a cart or kiosk shall be limited to a maximum of two (2) persons at any one time. (3249-6/95)
 8. Fire extinguishers may be required at the discretion of the Fire Department. (3249-6/95)
 9. All cart and kiosk uses shall be self contained for water, waste, and power to operate. (3249-6/95)
 10. A cart or kiosk operator shall provide a method approved by the Planning Director for disposal of business related wastes. (3249-6/95, 3525-2/02)
- D. Parking. Additional parking may be required for cart or kiosk uses by the Planning Director. (3249-6/95, 3525-2/02)
- E. Review; Revocation. The Planning Department shall conduct a review of the cart or kiosk operation at the end of the first six (6) month period of operation. At that time, if there has been a violation of the terms and conditions of this section or the approval, the approval shall be considered for revocation. (3249-6/95; 3525-2/02)
- E. Neighborhood Notification. Pursuant to Chapter 241. (3525-2/02, 3710-6/05)

230.96 Wireless Communication Facilities

- R A. Purpose. The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life in the City of Huntington Beach. (3779-10/07)
- NC B. Definitions. For the purpose of this section, the following definitions for the following terms shall apply: (3568-9/02)
- R
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility. (3568-9/02)
 2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
 3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.1

- NC 4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02, 3779-10/07)
- NC 5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
- R 6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
- NC 7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
- R 8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility. (3568-9/02)
- NC 9. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational facility lighting, or any other utility which meets the purpose and intent of this definition. (3568-9/02, 3779-10/07)
10. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02, 3779-10/07)
- R 11. Wireless Communication Facility or Facility. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02, 3779-10/07)

C. Applicability.

1. All wireless communication facilities which are erected, located, placed, constructed or modified within the City of Huntington Beach shall comply with these regulations provided that: (3568-9/02, 3779-10/07)
- D a. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines. (3568-9/02, 3779-10/07)
- b. All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies. (3568-9/02)

ATTACHMENT NO. 3.2

- P c. Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. Modifications outside the scope of the valid conditional use permit will require submittal of a Wireless Permit application. (3568-9/02, 3779-10/07)

- P 2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements. (3568-9/02, 3779-10/07)

- a. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02)

- NC b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)

- c. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)

- D d. Any antenna structure that is designed to receive radio broadcast transmission. (3568-9/02)

- NC e. Any antenna structure used by authorized amateur radio stations licensed by the FCC. (3568-9/02)

- P D. Wireless Permit Required. No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information: (3779-10/07)

- D 1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage. (3779-10/07)

- P 2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure. (3779-10/07)
3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet). (3779-10/07)
4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3779-10/07)
5. No portion of a wireless communication facility shall project over property lines. (3779-10/07)

- D 6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size: (3779-10/07)

ATTACHMENT NO. 3.3

D a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review: (3779-10/07) D

- i. All transmit and receive frequencies; (3779-10/07)
- ii. Effective Radiated Power (ERP); (3779-10/07)
- iii. Antenna height above ground, and (3779-10/07)
- iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3779-10/07)

R b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3779-10/07)

D c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3779-10/07)

d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3779-10/07)

e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. (3779-10/07)

R E. Additional Permit Required.

1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: (3779-10/07)

a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3779-10/07)

b. Completely stealth facilities that comply with the base district height limit; or (3779-10/07)

c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and (3779-10/07)

D i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or (3779-10/07)

ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3779-10/07)

ATTACHMENT NO. 3.4

- iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. (3779-10/07)

2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: (3779-10/07)

- a. Exceeding the maximum building height permitted within the zoning district; or
- b. Visible from beyond the boundaries of the site at eye level (six feet); or
- c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
- d. Not designed to be architecturally compatible with surrounding buildings and land uses.

e. As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction: (3779-10/07)

- i. Stealth installations; (3779-10/07)
- ii. Co-location and locating facilities within existing building envelopes; (3779-10/07)
- iii. Minimizing visual prominence through colorization or landscaping; (3779-10/07)
- iv. Removal or replacement of facilities that become obsolete. (3779-10/07)

3. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

F. Facility Standards: The following standards apply to all wireless communication facilities: (3779-10/07)

1. Aesthetics:

a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)

b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire. (3568-9/02)

c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

ATTACHMENT NO. 3.5

P 2. Building Codes: To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02) P

D 3. Conditions of Approval: Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)

P 4. Federal Requirements: All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities. (3568-9/02)

HC 5. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02, 3779-10/07)

P 6. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02, 3779-10/07)

7. Monitoring: For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02, 3779-10/07)

8. Signs: The facility shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage. (3568-9/02, 3779-10/07)

9. Facilities on Public Property: Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit. (3779-10/07)

10. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required. (3779-10/07)

HC 11. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3779-10/07)

P 12. Facilities in the Public Right-of-Way. Any wireless communication facility to be placed over, within, on or beneath the public right-of-way shall comply with the following standards: (3568-9/02, 3779-10/07)

- a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state-franchised telephone corporation exempt from local franchise requirements. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.0

D

- b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02, 3779-10/07)
- c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time. (3568-9/02, 3779-10/07)
- d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional use permits, and all applicable fees. (3568-9/02, 3779-10/07)
- e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02, 3779-10/07)
- f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project. (3568-9/02, 3779-10/07)
- g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way. (3568-9/02, 3779-10/07)

13. Facility Removal.

- NC a. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state. (3779-10/07)

- R b. Cessation of Operation: Within thirty (30) calendar days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless: (3568-9/02, 3779-10/07)

- 1. The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.7

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2. The City has received written notification of a transfer of wireless communication operators. (3568-9/02, 3779-10/07)

- c. Abandonment: A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02, 3779-10/07)
- d. Removal of Abandoned Facility: The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the facility in its entirety and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment. (3779-10/07)

P

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02, 3779-10/07)

- e. Removal by City: At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02, 3779-10/07)

ATTACHMENT NO. 3.8



November 2, 2011

VIA ELECTRONIC MAIL

Ricky Ramos, Senior Planner
City of Huntington Beach
Department of Planning and Building
2000 Main Street
Huntington Beach, CA 92648

RECEIVED

NOV 02 2011

Dept. of Planning
& Building

Re: City of Huntington Beach Draft Wireless Communications Facilities Ordinance

Dear Mr. Ramos,

PCIA—The Wireless Infrastructure Association (“PCIA”) writes in response to the proposed amendments to the City of Huntington Beach’s existing Wireless Communication Facilities Ordinance. PCIA appreciates the opportunity to express its concern regarding the proposed ordinance before being discussed at the upcoming November 8th planning study session.

PCIA is concerned with the tone of the ordinance and the limitations it could place on the deployment of wireless facilities. We encourage the City to craft an ordinance that enables deployment, rather than hinders it, by considering the comments submitted by the wireless industry and PCIA’s model wireless facility siting ordinance, attached herewith.

PCIA is the national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, telecommunications, and broadcasting services. PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of each community.

Wireless infrastructure is essential to the deployment of wireless service. Wireless services from basic voice communication to broadband require robust wireless infrastructure. These services enable communication, productivity, mobility, and public safety. Residents and businesses rely on wireless services to navigate their daily lives and compete in a global economy. It is estimated that by 2015, a majority of Americans will utilize a wireless device as their primary Internet access tool. Wireless service is therefore essential to access the vast resources and benefits the Internet enables, from commerce to political inclusion. Further, more than 70% of all emergency calls each day are placed with a wireless device—without wireless infrastructure, the ability to access first responders is significantly hindered. Without changes to the proposed ordinance, the City of Huntington Beach will stifle the ability to deploy the infrastructure necessary to provide the services that consumers, businesses, and first responders demand and require.

While we limit our analysis for brevity, we have reviewed the proposed Ordinance and respectfully request that the City make the revisions highlighted by the California Wireless Association (“CalWa”) in its letter dated September 12, 2011. PCIA generally supports the comments raised by other members of the wireless industry.

ATTACHMENT NO. 4.1

We are particularly concerned about §§230.96(D)(2)-(3), which gives the Director and Zoning Administrator a great deal of discretion to add onerous requirements as conditions on approval of permit applications. These requirements could be onerous and cost-prohibitive to the deployment of wireless infrastructure. PCIA is also concerned by the general tone of the proposed ordinance and particularly the lack of separate and distinct regulations for addressing proposed facilities within the City's public right-of-way, its continued stated intention to discourage facilities within residential areas, and the onerous requirements to "justify" the need for a proposed wireless communications facility.

As a general matter, good wireless infrastructure regulations do several things, including:

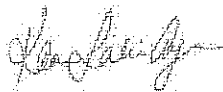
- Encourage the deployment of the latest technology and advanced services for the benefit of both residents of the territory and any visitors;
- Ensure towers are not placed without proper permitting;
- Ensure towers are placed safely and comply with necessary local and federal requirements;
- Incent joint use of facilities if feasible;
- Minimize to greatest extent possible the cost to place towers;
- Establish reasonable timeframes for all approvals to be given.

PCIA is concerned that the current proposed ordinance will not accomplish these goals and, thus, will significantly hamper future wireless service in Huntington Beach. Please find attached PCIA's model wireless facility siting ordinance, which has been utilized and tailored by communities across the U.S. to suit their unique needs and concerns. PCIA urges the City of Huntington Beach to use our model ordinance to rewrite the proposed ordinance amendments and address the concerns raised by CalWa and the wireless industry.

In conclusion, PCIA urges Huntington Beach to take this opportunity to work with the wireless industry to rewrite its ordinance to enable the deployment of a robust wireless network. The wireless services upon which the citizens and businesses of Huntington Beach rely are themselves reliant upon the responsible deployment of wireless facilities, and the City should collaborate with industry to craft regulations to facilitate such deployment.

We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the needs of the citizens, businesses, and first responders in Huntington Beach.

With best regards,



Kara Leibin Azocar
Policy Analyst
PCIA—The Wireless Infrastructure Association
901 N. Washington St., Suite 600
Alexandria, VA 22314
703-535-7451
Kara.Azocar@pcia.com

Enclosures: PCIA Model Wireless Facility Siting Ordinance



MODEL WIRELESS TELECOMMUNICATIONS FACILITY SITING ORDINANCE

PCIA--THE WIRELESS INFRASTRUCTURE ASSOCIATION

2010

About PCIA

PCIA - The Wireless Infrastructure Association is the principal trade association representing the companies that make up the wireless telecommunications infrastructure industry. Its members include the carriers, infrastructure providers and professional services firms that own and manage more than 125,000 telecommunications facilities throughout the world.

For more information, please go to www.pcia.com.

ATTACHMENT NO. 4.3

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents, public safety operations and businesses in [Jurisdiction] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [Jurisdiction's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with [the Jurisdiction's] land use policies, [the Jurisdiction] is adopts this single, comprehensive, wireless telecommunications ordinance. No provisions of this Ordinance shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Jurisdiction's] intent to:

- (1) Ensure [Jurisdiction] has sufficient wireless infrastructure to support its public safety communications throughout [Jurisdiction];¹
- (2) Ensure access to reliable wireless communications services throughout all areas of [the Jurisdiction];²
- (3) Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;³
- (4) Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;

¹ Many public safety operations utilize commercial networks; this trend will continue to grow as commercial providers further deploy wireless broadband systems.

² This is important because wireless users depend on their mobile devices everywhere – in their homes and offices, and while on travel.

³ A core policy goal here is to encourage co-location of wireless facilities on existing structures.

- (5) Facilitate the responsible deployment of Telecommunications Facilities in residential areas to ensure comprehensive wireless services across [Jurisdiction];
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
- (7) Ensure public health, safety, welfare, and convenience.

II. Definitions.

For the purposes of this Ordinance, the following definitions apply:

Abandon -- Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- Non-discretionary evaluation of an application by the [Zoning Administrator] or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Collocation⁴ -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of a Existing Structure.

Carrier on Wheels or Cell on Wheels ("COW") -- A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

⁴ This definition is consistent with the FCC's Declaratory Ruling on Wireless Infrastructure Siting.

Distributed Antenna Systems ("DAS") – A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure – Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located.⁵ Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility⁶ -- Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer.

Substantial Increase:⁷ Occurs when:

⁵ The description of antenna swaps as "ordinary maintenance" is important because carriers regularly upgrade antennas as part of periodic network improvements.

⁶ The decision to employ stealth technology involves a variety of engineering, structural and financial factors, and should be made by the network operators.

⁷ This definition is taken from the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

(1) [t]he mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review

(i) Collocations and Minor Modifications shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(ii) New Support Structures that are less than sixty (60)⁸ feet in height shall be permitted in any zoning district except residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

⁸ Sixty feet is a suggested height but actual height requirements may vary based upon local topography.

(iii) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iv) Stealth Telecommunications Facilities up to 150 feet shall be permitted in any zoning district other than residential after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance except as noted above.

(v) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vi) Monopoles or Replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vii) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration or emergency, or will last in excess of one hundred-twenty (120) days, Administrative Review and Administrative Approval shall also be required.

(B) Special Permit.⁹ Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.

(C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [the Jurisdiction] after a declaration of an emergency or a disaster; and (4) television and AM/FM radio broadcast towers and associated facilities.

⁹ This process refers to whatever quasi-judicial process the Jurisdiction already has in place. Such processes are also known as "special use" and "conditional use" among other names. Jurisdictions should conform this section to their existing language.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

(A) Telecommunications Facilities Located on Existing Structures

- (1) Telecommunications Facilities are permitted in all zoning districts when located on any Existing Structure subject to Administrative Approval in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.
- (3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this Part.

(B) New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts except residential districts in accordance with the requirements of this Part.
- (2) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in any residential district after Administrative Review and Administrative Approval provided that it meets the applicable Stealth Telecommunications Facility standards in accordance with this Ordinance
- (3) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.
- (4) A Monopole or Replacement pole that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.¹⁰
 - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.

¹⁰ This section allows for efficient use of public rights-of-way for the provision of wireless services.

- (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
 - (d) Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
 - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f) Poles that use the structure of a utility tower for support are permitted under this Part. Such poles may extend up to twenty (20) feet above the height of the utility tower.
 - (5) Monopoles or Replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.
- (C) Stealth Telecommunications Facilities
- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below. Stealth facilities in residential areas must not exceed sixty (60) feet and comply with the requirements below in order to qualify for Administrative Review.
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - (b) Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for Stealth Facilities that utilize a new structure shall be governed by the setback requirements of the underlying zoning district.

(D) COW Facilities and Minor Modifications

- (1) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-twenty (120) days.

(E) General Standards, Design Requirements, and Miscellaneous Provisions

- (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

(F) Administrative Review Process

- (1) All Administrative Review¹¹ applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
 - (c) Site plans detailing proposed improvements which complies with [Jurisdiction's existing site plan requirements].¹² Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:
 - (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option;¹³ and
 - (ii) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation

¹¹ The name of this process should be conformed to the jurisdiction's existing name for a similar process.

¹² The jurisdiction should include a cross reference to its existing site plan requirements.

¹³ This evidentiary requirement allows local jurisdictions an opportunity to review an application's alternatives, and requires providers to prove that collocation is not viable in a specific circumstance.

why the alternatives considered were either unavailable, or technologically or reasonably infeasible.

- (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

- (e) Administrative Review application fee as listed in [Jurisdiction's published fee schedule].¹⁴

(2) Procedure¹⁵

- (a) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.¹⁶ An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The [Zoning Administrator] must issue a written decision granting or denying the request within ninety (90) days of the submission of the initial application unless:
 - (i) [Zoning Administrator] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or
 - (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within ninety (90) days shall constitute an approval of the application.

¹⁴ The jurisdiction should include a cross reference to its published fee schedule.

¹⁵ The FCC has issued a Declaratory Ruling establishing the timeframes for a jurisdiction to act on an application to site wireless infrastructure. The procedure here is reflective of that Ruling, however Jurisdiction can substitute its current procedure so long as it complies with the FCC's decision.

¹⁶ Jurisdictions should conform this time requirement to meet their existing code for information submission.

- (d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.¹⁷

V. Telecommunications Facilities and Support Structures Permitted by Special Permit.

- (A) Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:
 - (1) The submission requirements of Section V (B) below; and
 - (2) The applicable standards of Sections VI and VII below; and
 - (3) The requirements of the special permit general conditions at Code Section _____. [Insert cross reference to Jurisdiction code section that establishes general conditions applicable to Special Permits.]¹⁸
- (B) Submission Requirements for Special Permit Applications
 - (1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:
 - (a) Special Permit application form signed by applicant.
 - (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms
 - (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.

¹⁷ The jurisdiction should substitute its standard process for appeal.

¹⁸ This allows for Special Permit/Conditional Permit review of proposed facilities that do not meet the "preferred" standards of Section IV.

- (d) Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
- (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.¹⁹
- (f) Line-of-sight diagram or photo simulation,²⁰ showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
- (g) A statement justifying why Collocation is not feasible. Such statement shall include:
 - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.
- (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
- (i) Notification of surrounding property owners as required by [insert Jurisdiction's relevant existing code provisions]
- (j) Special Permit application fee as listed in [Jurisdiction's published fee schedule].²¹

(C) Procedure²²

- (1) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete and meet with the applicant. If the Zoning Administrator informs the Applicant of an incomplete application within thirty (30) days, the overall

¹⁹ If you are proposing a monopole under 100' in a residential area no additional submission is required.

²⁰ Photo simulations provide the community with valuable visual data showing the effect of the proposed new structure on the visual landscape.

²¹ The jurisdiction should include a cross reference to its published fee schedule.

²² Same as IV(E)(2) above.

timeframe for review is suspended until such time that the Applicant provides the requested information.

- (2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice.²³ An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (3) A complete application for a Special Permit shall be scheduled for a hearing date as required by [insert Jurisdiction's relevant existing code provisions].
- (4) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (5) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.
- (6) The [Zoning Administrator] must issue a written decision granting or denying the request within one hundred-fifty (150) days of the submission of the initial application unless:
 - (i) [Zoning Administrator] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the one hundred-fifty (150) day total review time is suspended until the Applicant provides the missing information; or
 - (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within one hundred-fifty (150) days shall constitute an approval of the application.

VI. General Standards and Design Requirements.

(A) Design

- (1) Support Structures shall be subject to the following:

²³ Jurisdictions should conform this time requirement to meet their existing code for information submission.

- (a) Shall be designed to accommodate a minimum number of collocations based upon their height:²⁴
 - (i) Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
 - (ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;
 - (iii) Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.
 - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).
- (2) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.
- (3) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.
- (B) Setbacks
- (1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point.
 - (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.
 - (3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.

²⁴ This provision will limit the proliferation of new structures by providing for future co-location opportunities.

- (4) The [Zoning Board or Zoning Administrator] shall have the authority to vary any required setback upon the request of the applicant if:
 - (a) Applicant provides a letter stamped by a certified structural engineer documenting that the proposed structure's fall zone is less than the actual height of the structure.
 - (b) The Telecommunications Facility or Support Structure is consistent with the purposes and intent of this Ordinance.

(C) Height

- (1) In non-residential districts, Support Structures shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the [Zoning Board] shall have the authority to vary the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics

- (1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public

right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.

- (E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

VII. Miscellaneous Provisions.

- (A) Fencing
 - (1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].
 - (2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.
- (B) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the [Jurisdiction] may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The [Jurisdiction] shall ensure and enforce removal by means of its existing regulatory authority.
- (C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

VIII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

- (A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.²⁵
- (B) The provisions of this Part are limited to those structures that do not meet the height or setback requirements set forth in these regulations.
- (C) Non-conforming Support Structures
 - (1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a Non-conforming Support Structure or Telecommunications Facility.
 - (2) Collocation and/or Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.
 - (3) Major Modifications may be made to non-conforming Support Structures utilizing the regulatory approval process defined in Section V.

²⁵ This provides for the continued operation of existing facilities, which is necessary for maintenance of today's wireless networks, and which will serve as platforms for future network improvements.

For Further Questions Please Contact:

Jonathan M. Campbell
Government Affairs Counsel
PCIA – The Wireless Infrastructure Association
901 N. Washington St.
Suite 600
Alexandria, VA 22314
(703) 535-7401
campbellj@pcia.com

NOV 08 2011

Dept. of Planning
& Building

Huntington Beach Planning Commission
Study Session for Zoning Text Amendment No. 09-002

Reading the first page of the Study Session Report gave me an initial feeling of appreciation. Mentioned were the issues of **Wireless Communication Facilities** (aka 'cell towers') within 500 feet of school sites; prohibiting WCFs on city-owned park land adjacent to elementary schools; requiring a public hearing for new ground or utility mounted cell towers; and the Denial of Effective Service appeal that would require a consultant be hired to verify if a coverage gap exists, and that the proposed location is the least obtrusive location feasible. But the feeling of appreciation faded as I read the proposed zoning ordinance amendments.

- I could not find any text referencing the issue of WCFs within 500 feet of school sites;
- I could not find text prohibiting cell towers on city-owned park land adjacent to elementary schools;
- Although a public hearing would be required for any new ground or utility mounted WCFs, 3 of the 4 wireless permit scenarios allow "rubber stamping" permit approvals without public notification or public hearings.
- The current requirements (230.96.D) for a wireless company to "demonstrate existing gaps in coverage" and to demonstrate that the antenna would be "located in the least obtrusive location feasible so as to eliminate any gap in service" would be stripped from the ordinance. The **only** time a wireless company would have to prove a gap in service or justify the location of the WCF would be for the newly proposed Denial of Effective Service appeal. And the way I understand it, this is likely to happen **only** if a resident discovers the approved permit and files an appeal within the 10 day period.

That initial feeling of appreciation was replaced by disappointment.

The 1,000 foot Co-location issue and the Coverage Area of a WCF (cell tower)

Co-location was also addressed in the zoning amendments for proposed WCFs within 1,000 feet of an existing wireless facility. Requiring Co-location is good. But 1,000 feet is too short a distance. The distance should be much longer based on a WCF's Coverage Area.

"Coverage for LA33421A" map

- The "Coverage for LA33421A" map submitted by T-Mobile shows the projected coverage for the proposed cell tower at Community United Methodist Church that was denied, in part, due to the inability to prove a gap in service. CUMC is on Heil, just east of Edwards in north Huntington Beach.
- T-Mobile's cell coverage map shows three T-Mobile cell towers within one mile of CUMC. Two of these cell towers are within one-half mile.
- The projected cell coverage from the CUMC site is shown extending one mile north, beyond the existing T-Mobile cell tower at McDonald's one-half mile away.
- Coverage is shown extending one mile southeast, beyond the existing T-Mobile cell tower at Murdy Park one-half mile away.
- And coverage is shown extending one mile southwest, past the existing T-Mobile cell tower behind 24 Hour Fitness at Springdale and Warner.

Huntington Beach Planning Commission
Study Session for Zoning Text Amendment No. 09-002

- According to T-Mobile, cell towers are capable of a much greater coverage distance than 1,000 feet.

Illustration of 1 Square Mile

- This illustration represents a square mile.
- The squares represent 1,000 by 1,000 feet. **1,000 feet is less than 1/5 of a mile.**
- If co-located WCFs were allowed every 1,000 feet (or individual WCFs were allowed every 1,001 feet), there could be **over 25 WCF locations within every square mile.**

Co-location is good. But the required distance needs to be **considerably** longer.

List of Suggestions for Ordinance Change

Early in 2010, I submitted a **list of suggestions** to the City Council regarding changes to cell tower ordinances. That list is included in the handout.

Some of those suggestions are:

- Change the point in the application process at which notifications are sent.
- Enlarge the notification area
- Expand the sector of recipients to whom notifications are sent.
- Increase the length of time for the advance notification.
- Create guidelines for determining what constitutes a "coverage gap" and "adequate cell coverage."
- Add a requirement for an independent study of current cell coverage before a wireless permit is issued.
- Increase the cell tower application fee to cover the cost of the required independent study and the increased notification expenses.
- Require documentation that all alternatives, including co-location on existing antennas, cell towers, and/or structures, are thoroughly researched and exhausted before a new cell tower would be considered.

Public Awareness Suggestion: Create and maintain an easy-to-use, cross-referenced list – for public use - of WCFs and their stage in the process of application, approval process, etc. This is public information but it is currently difficult to track down, (even for employees in the Planning Dept.). A searchable list on a city webpage, for example...

Residents have repeatedly called for a stop to the so-called "rubber stamp" approval process of wireless permits. We want a more stringent approval process requiring demonstration of significant gaps in coverage, and demonstration of the least obtrusive WCF locations. We want required notification to residents in a larger area, at an earlier point in the process – before any wireless permits are approved.

Respectfully,
Dianne Larson

T-Mobile

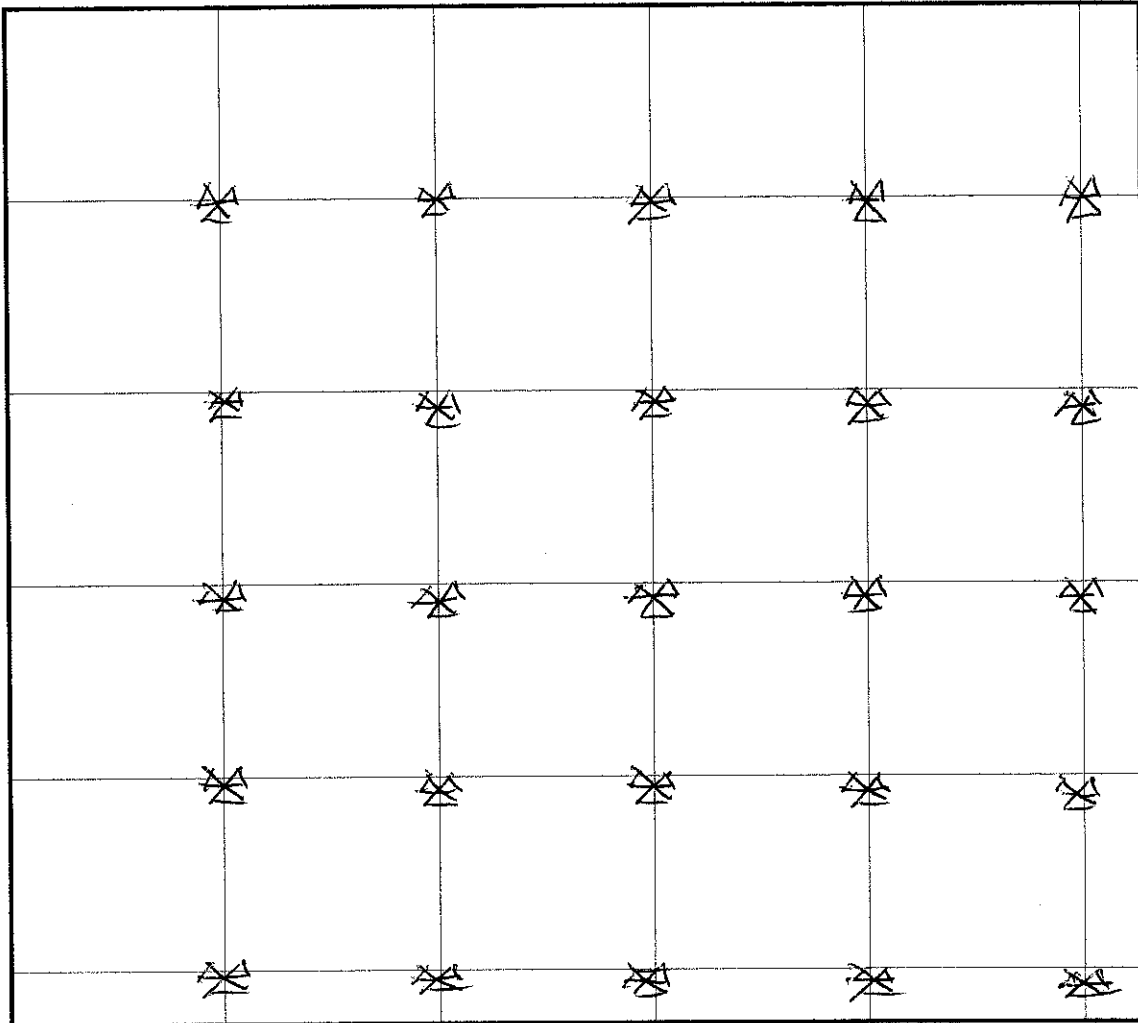
Coverage for LA33421A

Coverage Legend

- Outdoor -91dbm
- In Vehicle -84 dbm
- In Building -76 dbm

This information, property of T-Mobile USA, Inc. is confidential and is intended solely for the use of the individual or entity to whom it is addressed. Any other use, distribution, or disclosure of this information is strictly prohibited. This map depicts and estimates our wireless coverage area outdoors, which may change without notice. It may include locations with limited or no coverage. Our maps do not guarantee service availability. Even within a coverage area, there are several factors, such as: network changes, traffic volume, service outages, technical limitations, signal strength, your equipment, terrain, structures, weather, and other conditions that may interfere with actual service availability. We are not responsible for any outages or service interruptions.

**1 MILE = 5,280 FEET. THE LARGE SQUARE REPRESENTS 1 SQUARE MILE.
THE SMALL SQUARES ARE 1,000 FEET BY 1,000 FEET.**



WILL PROPOSED TEXT ALLOW A WCF EVERY 1,001 FEET?

ATTACHMENT NO. 4.24

February 27, 2010

Huntington Beach City Council Members:

Mayor Green, Mayor Pro Tem Hardy, and Council Members Bohr, Carchio, Coerper, Dwyer and Hansen,

This list includes modifications to my previous suggestions for changes to the Huntington Beach city ordinances regarding cell towers. Items 1, 3 and 7 have been changed. Item 8 has been added.

I believe that incorporating these changes would prevent many of the issues that arose from the opposition to the three proposed cell towers in 2009 and would help protect the city from lawsuits.

1. Change the point in the application process at which the first notifications are sent.
Mail notifications to the public when a cell tower application is submitted – BEFORE any action is taken, including the granting of a wireless permit. Additionally, mail notifications before decisions are made at every level (i.e., wireless permit, zoning, planning, etc.).
2. Enlarge the notification area.
Enlarge the notification area from the current 500 foot radius to a 1200 foot radius. The 1200 foot distance is associated with both the decrease in property value due to the stigma of the proximity to cell towers and to the health impact from the non-thermal radiation emitted by the cell towers.
3. Expand the sector of recipients to whom notifications are sent.
Notify all local property owners, residents, businesses, employees and parents of all students (pre-school through high school, public or private) who own, live, work or have students in an area that would be impacted by a proposed cell tower. Parents of children in public or private daycare facilities, including before- and after-school care facilities, should also be notified.
4. Increase the length of time for the advance notification.
Increase the current 10-day advance notification period to 21 days (three weeks).
5. Create guidelines for determining what constitutes a "coverage gap" and "adequate cell coverage."
Determine the threshold for the acceptable percentage of dropped calls, how the call volume is measured, etc., and at what level a "gap" or "weak area" is considered "significant" enough to justify installation of a new cell tower.
6. Add a requirement for an independent study of current cell coverage before a wireless permit is issued.
7. Increase the cell tower application fee to cover the cost of the required independent study and the increased notification expenses.
8. Require documentation that all alternatives, including co-location on existing antennas, cell towers, and/or structures, are thoroughly researched and exhausted before a new cell tower would be considered.
This documentation should be submitted with the application for the wireless permit.

I urge that an immediate moratorium against accepting any new cell tower applications be initiated and kept in place until changes to the city ordinances are put into effect.

Respectfully,
Dianne Larson
LarsonDJ@verizon.net

ATTACHMENT NO. 4.25

Don McFarland
66310 Mason Drive
Huntington Beach

RECEIVED

NOV 08 2011

Dept. of Planning
& Building

My recommendations for the
Zoning Text Amendment No. 09-002
(Wireless Communication Facilities)

The Zoning should be written primarily to permit the City and its residents NOT a Wireless co. to control what is built where in the City since this is the reason for having a planning commission and Zoning to start with.

I also would recommend that when the requirement to show a hole in coverage exists that the information required be clearly defined. This evidence should include, but not be limited to, the following.

- 1 what equipment was used to collect data.
- 2 the accuracy and calibration of the equipment.
- 3 who took the data and the qualification of this person?
- 4 when and where was the data collected.
- 5 who prepared the documents presented showing a hole in service.
- 6 the qualification of this person.

The source and form of other data, such as dropped calls, should be specified by the City not the applicant.

These recommendations are made after seeing the inaccurate and misleading data presented by Tmobile last year.

Wireless is vital to jobs and the economy

- Communities in China, Europe and Japan have vastly superior wireless infrastructure to that of Orange County
- Korea is a complete wireless economy
- Companies want to move where technological infrastructure is in place to keep them on the cutting edge. This is why many large companies have decided to head overseas
- Within the US, places such as Philadelphia and the North Ohio Consortium are building large scale wireless fiber networks
- North Carolina recognizes the importance of wireless infrastructure and is working to create a robust broadband system
- By having a wireless plan, the city of Jackson Hole, Wyoming almost instantly attracted 700 jobs to its city. Those people work remotely for a company in China that pursued a wireless friendly location
- Orange County remains behind the curve in terms of wireless infrastructure, leaving companies to look elsewhere for locations and limiting the number of jobs being brought to this region

Orange County Needs Wireless Infrastructure

Growing demand for wireless service can overburden wireless networks, leading to unreliable, spotty coverage. All around the world countries are expanding their wireless capabilities, making it possible to do more through wireless applications. The United States is no longer leading the charge when it comes to wireless infrastructure and is in many instances sliding backwards. Modern societies need infrastructure, be it in transportation, water, housing, or technology. As a global leader, it is time for Orange County to resume this role in the technology realm and that begins right here, locally, in your own city. The future economy will not be accommodated without wireless infrastructure.

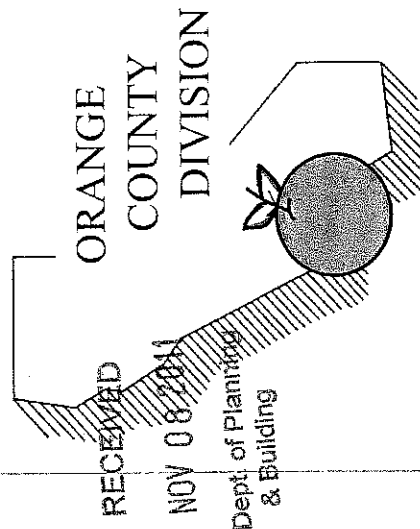


600 West Santa Ana Blvd.
Suite 214
Santa Ana, CA 92701

Phone: 714-972-0017
Fax: 714-972-1816

Challenges and Solutions to Managing Quality Cell Service

A GUIDE FOR CITY OFFICIALS AND THEIR RESIDENTS

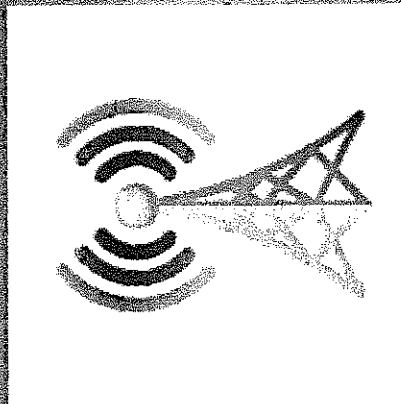


LEAGUE OF CALIFORNIA CITIES

Published By:
Orange County Division,
League of California
Cities

The Demand for Wireless

More than 80 percent of Americans subscribe to a cell phone service. People are relying on cell service technology to function in their everyday lives. In 2006 the cell phone surpassed the landline by becoming the predominant way that Americans communicate by phone. With the onset of Smartphones, more Americans get their news, emails and telephone communications via cell phone than ever before. In fact many people are now opting to drop their landlines altogether and rely solely on wireless technology for their communication needs.



Wireless communication is not wire free, it does take physical infrastructure to send and receive cell phone calls. While this is an exciting time for Americans and their technological options, cell service providers are receiving increasing amounts of push back from residents regarding their efforts to enhance wireless networks. You cannot have quality cell service coverage without infrastructure behind it. Without expansion of wireless networks, cell service customers will see an onset of dropped calls and inability to get a signal.

Cell Towers put off less RF than a baby monitor:

Many citizens are concerned that cell towers will increase their exposure to "Radio Frequencies" and have damaging health effects. Cell service technology uses the same technology that delivers radio and television broadcasts, and enables baby monitors to work in your phone. Scientists throughout the world have continuously found that there is no public health threat from RF wireless emissions. RF emissions from a typical cell site are a minuscule percentage (0.0001%) of what the Federal Communications Commission (FCC) allows.

Typical RF exposure from common devices

Exposure in megawatts/cm2

| | |
|-------------------------|------|
| Police and Mobile Radio | 250 |
| FM Radio Transmitter | 100 |
| Cordless Phone | 15 |
| Baby Monitor | 1 |
| WiFi Router | 0.13 |
| Cell Site | 0.1 |

While public safety seems to be number one on the public's priority list when it comes to allowing new wireless infrastructure, many people do not realize that that a lack of infrastructure may have an even greater public safety risk. Almost half of the 9-1-1 calls made in the United States today come from cell phones. Forty percent of children ages 12 to 14 have a cell phone with parents citing "safety" as the primary reason for providing the phone to their children. AARP reports that 56 percent of Americans over 65 own a cell phone for primarily the same reason. With the county of Orange launching programs such as AlertOC, to provide text information to individuals regarding disaster in their area, how can the residents of Orange County continue to fight wireless infrastructure in their area? At this point it truly is a matter of public health. If you cannot get a signal, all of those phones in place for "safety" become useless.

Home Values could be increased by wireless coverage:

Outside of public health, property value is the major concern when installing new wireless infrastructure. Residents have concern about their homes losing value if they are within a certain distance of a cell tower. Recent real estate appraisals have shown that property values are not impacted because a cell site is nearby and in fact the opposite may be true. Many real estate agents frequently report that strength of wireless signal is has a significant impact on a buyer's selection of a new home.

Cell Site Location is an exact science:

Cell sites are not chosen at random. Cell service providers go through an in depth process with every selection made. Every site is selected based on scientific analysis, zoning, real estate agreements, and construction and permitting requirements. Cell service providers work closely with cities to meet the needs of residents and ensure that the community's needs are met.

Wireless is vital to public safety in Orange County

"In my over 20 years in public safety communications, I've seen the meteoric rise in the popularity and usage of cell phone technology. It's not just the wave of the future. It is NOW. The lives and property of the citizens of Orange County depend on a robust infrastructure to support wireless technology. We in the world of 911 stand ready to send all the help the citizens need, but they can't get it if they can't access us through their wireless devices. A solid infrastructure, including the installation and building of new cell towers, is CRUCIAL for proper coverage of ALL areas of this county."

Ryan Turner, Senior Fire Communications Supervisor-OCFA



CITY OF HUNTINGTON BEACH
Interdepartmental Communication

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NOV 15 2011
Dept. of Planning
& Building

TO: CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: JENNIFER McGRATH, City Attorney

DATE: November 14, 2011

SUBJECT: Proposed Revisions to the City's Wireless Communications Ordinance

The City Attorney's Office has been working closely with staff to revise the City's Wireless Communications Facilities Ordinance following City Council direction. After many revisions and meetings it was determined that a major overhaul of the ordinance was necessary. Prior to placing the matter on Commission agenda, the draft ordinance was circulated with the Wireless Industry for comment. The comments received from the Wireless Industry representatives are based primarily upon legal issues regarding the Federal Telecommunications Act ("TCA"), and California Public Utilities Code Section 7901. The comments are summarized in the attached Matrix. This memo provides a brief summary of the law, the major revisions to the ordinance and addresses comments made by the Wireless Industry representatives.

I. Summary of Authority to Regulate Wireless Antennas

The Federal Telecommunications Act (TCA) "preempts" or supersedes local regulations with regard to certain wireless communications issues. First, TCA Section 253(a) preempts any local regulation that "prohibits or has the effect of prohibiting" mobile phone service. Second, TCA Section 332 authorizes wireless companies to challenge in Federal Court the denial of any local permit to install a wireless antenna.

Initially, the Ninth Circuit cases struck down zoning ordinances requiring discretionary permits to install wireless antennas. These cases culminated in a decision entitled *Sprint Telephony v. County of San Diego* (9th Cir. 2007) 490 F.3d 700, where the Ninth Circuit struck down any application of a conditional use permit ("CUP") requirement to wireless antennas.¹

In 2008, the Ninth Circuit reversed the previous decisions and approved the use of CUPs. (*Sprint Telephony*, 543 F.3d 571.) The Ninth Circuit held that a zoning board could "exercise its discretion to balance the competing goals" of encouraging mobile phone service and other valid public goals, such as safety and aesthetics." (543 F.3d at 580.) The *Sprint Telephony* Court

¹ Based upon the *Sprint* decision, in 2007, NextG successfully sued Huntington Beach in Federal Court and obtained a preliminary injunction allowing it to install one-half of its proposed 15 antenna DAS. Later, when *Sprint* was reversed, so was the injunction, leading to the still pending litigation between the City and NextG before the CPUC and in State Court.

concluded that a zoning ordinance would be invalid on its face only if it prohibited all antennas, or limited them to so few zones that service was effectively prohibited. (543 F.3d at 580.). As a practical matter, this means that the City is free to regulate wireless antennas based upon aesthetics, such as through camouflaging requirements, setbacks, and limiting the height of antennas.

While the City may require CUP's the Ninth Circuit has set forth a two-part, fact-based test to determine whether the denial of a CUP for a specific antenna is valid:

1. Does the denial of a CUP prevent the wireless provider from closing a "significant gap" in mobile phone coverage?
2. Are there no other feasible alternative locations that would meet the City's objectives in denying the first site? (*MetroPCS, Inc. v. City and County of San Francisco* (9th Cir. 2005) 400 F.3d 715, 731.)

If an applicant can demonstrate the above two factors the City's discretion is removed and the City may not deny a CUP to install a wireless facility.

Federal law clearly prohibits the City from denying a company from citing wireless facilities based upon the potential **health effects** of the radio frequency emissions. Courts have said that the City must ignore evidence including public comments based upon dangers of radio frequencies (above threshold levels). Instead, the City must make findings based upon substantial evidence in the record that denial is because of aesthetics, safety or other valid grounds.

II. Four Major Revisions to the Ordinance

The first major revision is that the Director of Planning and Building ("Planning Director" or "Director") may administratively approve only co-locations, modifications to and antennas that are "Completely Stealth;" that is, completely screened from public view (such as an architecturally screened roof mounted antenna.) (Section 230.96 (B)(2), (E)(2)(c).) A CUP is required for all other antennas, including any new ground or utility mounted antennas. (Section 230.96(E)(3).) This is a significant change, because the City has reduced the class of antennas that may be administratively approved without notice to surrounding property owners.

The second major revision is that a Wireless Permit will no longer be required for all antennas. The Wireless Permit will only be required where a CUP is not necessary.

The third major revision is that applicants will no longer have to initially demonstrate that the antenna is necessary to fill an existing gap in service and is in the least obtrusive location. As revised, the City will evaluate the application according to the traditional standards for all CUPs, including whether the use will not be detrimental to the general welfare of persons residing in the

vicinity, nor detrimental to the value of the property and improvements in the neighborhood. (Section 241.10(A).)

The fourth major revision is if the antenna is approved, but appealed by a third party, or denied, and appealed by the applicant, then the applicant may file a Denial of Effective Service Appeal. This appeal will be heard by the Planning Commission, subject to appeal to the City Council. (Section 230.96(F).) This appeal would allow an applicant to assert that the City must approve the application otherwise the applicant cannot close a "significant gap" effectively prohibiting wireless service. A separate appeal fee will be used by the City to hire a consultant to review and verify if a proposed antenna is needed to fill an existing gap in service and if it is located in the least obtrusive location feasible so as to eliminate a gap in service. (Section 230.96(F.1).)

III. Industry Objections

1. Regulation of Wireless Facilities in the Public Right-of-Way.

NextG and Verizon object to application of the Wireless Ordinance to antennas to be located in the PROW. Essentially, the companies argue that California Public Utilities Code Sections 234(a) and 7901 preempt local regulation of wireless facilities in the City right-of-way. To date, there are no California cases settling this dispute and NextG and the City are currently litigating these issues. *City of Huntington Beach v. California Public Utilities Commission*, Court of Appeal Case No. G044796.

In addition, NextG has sued the City over its current Wireless Ordinance in *NextG v. City of Huntington Beach*. Currently, this second State Court suit is stayed, while the Section 7901 question is resolved in the Court of Appeal. It should be noted that the CPUC took no action to preempt the City's Wireless Ordinance, and consequently, it remains in place. Further, the CPUC General Order 159 requires that companies like Verizon obtain local land use approval in order to install their antennas anywhere in the City.

2. Denial of Effective Service Appeal

Verizon, T-Mobile and NextG object to the Denial of Effective Service Appeal. They each argue that only a Federal Court may determine if the denial of the antenna constitutes effective prohibition of service, and that the provider should not be required to pay for a consultant to aid the City in this determination.

Although Long Beach and a few other cities have adopted similar procedures, to date, no Court has determined if Federal law preempts the City in this regard. The City Attorney believes the procedure is valid, particularly given that as a general rule, there is a presumption against Federal preemption of City zoning regulations. (*New York SMSA Ltd. Partnership v. Town of Clarkstown*, (2nd Cir. 2010) 612 F.3d 97, 104.)

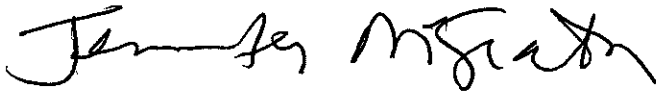
The principal criticism of CalWA, the industry trade group, to the draft Wireless Ordinance is that it does not strike the proper balance between "aesthetic regulation" and a "robust and ubiquitous wireless communications network." (CalWA, p. 5.) The Denial of Effective Service Appeal strikes that balance. It assures the City may in some instances, find the need for mobile phone communications must trump traditional zoning regulations.

The letters from T-Mobile, Verizon Wireless, and NextG assert a number of other issues with the proposed ordinance as follows:

- a. Section 230.96(E)(1)(g) and Public Utilities Code Section 7901. (T-Mobile, Verizon.) City Attorney Response: No revision to Section 230.96(E)(1)(g) is required. The Section requires that the provider provide evidence of a license, lease or franchise to use City property. While the City disputes that Section 7901 grants wireless providers the right to use the PROW, this filing requirement does not prevent the applicant from claiming a Section 7901 franchise when filing its Wireless Permit Application.
- b. Section 230.96(E)(1)(h) and Co-Location of Antennas. (T-Mobile.) City Attorney Response: No revision is necessary. Section 230.96(E)(1)(h) requires the locations of all antennas within 1,000 feet of the proposed antenna. The concern is to address the over-concentration of antennas in one portion of the City through co-location, where feasible. There is nothing "overly burdensome" about this requirement.
- c. Section 230.96(E)(2) and Planning Director Discretion. (T-Mobile, Verizon, NextG.) City Attorney Response: No revision is necessary. Section 230.96(E)(2) authorizes the Planning Director to require a public hearing and CUP even for antennas that the Director may approve administratively. While it is expected that most Completely Stealth and non-freestanding antennas would be administratively approved, there may be exceptional circumstances where the Director concludes that a public hearing and approval by the Zoning Administrator is necessary. This additional review does not amount to a denial of a permit, but merely opens it up to public comment.
- d. Government Code Section 65850.6 and Co-Location. (T-Mobile.) City Attorney Response: No revision is necessary. Section 65850.6 defines a "wireless telecommunications co-location facility" as a City-granted permit for multiple antennas. Once such a discretionary permit is granted, then all subsequent applications to add antennas to that facility must be approved administratively. T-Mobile suggests that the City would require a CUP for such additional antennas. To the contrary, Section 230.96(E)(2)(a) already authorizes the Planning Director to administratively approve co-location antennas.
- e. Section 230.96(G)(13) and Public Utilities Code Section 7901. (Verizon.) City Attorney Response: No revision necessary. Section 230.96(G)(13) merely requires that the applicant demonstrate how it will provide power to the site. A utility franchise agreement with the City is unnecessary as part of a land use application.

f. Section 230.96(E)(1) and Planning Director Discretion. (Verizon, NextG.) City Attorney Response: No revision is necessary. Section 230.96(E)(1) authorizes the Planning Director to require supplemental information as part of a complete Wireless Permit Application. It is expected that this authority will only be exercised in exceptional circumstances where the Director concludes that additional information is necessary.

g. Section 230.96(E)(2)(b), Modified Facilities and Planning Director Discretion. (Verizon.) City Attorney Response: No revision is necessary. Sections 230.96(B) (6) and (E)(2)(b) together authorize the Planning Director to administratively approve modifications to previously approved wireless facilities. There is no basis for the suggestion that this will be a "lengthy approval process," or that the Director will abuse his discretion to permit modifications administratively.



JENNIFER MCGRATH,
City Attorney

/mv

Attachment: Matrix of Wireless Industry Comments

Comments Received from Wireless Industry
(September 19, 2011)

| Source | Comment |
|----------|--|
| T-Mobile | <p>1. Denial of Effective Service Appeal –</p> <ul style="list-style-type: none"> ▪ Not City's role to apply federal law. ▪ Shift's City's litigation costs to applicants. ▪ Burdensome and subjective demonstration of "need". ▪ Significant gap to be applied/interpreted by courts and not by cities. ▪ Various problems with evidence required |
| | <p>2. Wireless Permit Requirements –</p> <ul style="list-style-type: none"> ▪ Requirements on applicants are burdensome. ▪ Screening requirements in 230.96(E)(1)(c) not required of other utilities violate Public Utilities Code (PUC) Sec. 7901 by effectively precluding WCFs in public right-of-way (ROW). ▪ 230.96(E)(1)(g) requirement for franchise agreement runs afoul of PUC Sec. 7901 because telephone corporations already have statewide franchise to occupy ROW. ▪ 230.96(E)(1)(h) co-location requirement overly broad and burdensome because it does not limit its reach to proposals that seek to construct a new support structure. ▪ 230.96(E)(2) allowing Director to re-evaluate WCF deprives applicants of objective standards. |
| | <p>3. CUP Requirements –</p> <ul style="list-style-type: none"> ▪ CUP requirements are overly burdensome and contrary to Govt. Code Sec. 65850.6 which permits co-location without discretionary permits. ▪ CUP requirements suffer from same flaws as Wireless Permit requirements. ▪ CUP requirements for utility mounted facilities, which do not apply to other utilities in the ROW, violate PUC Sec. 7901. ▪ Requirements to remove or replace obsolete WCFs are preempted. ▪ CUP requirement for any new ground or utility mounted WCF rejected by Congress and interferes with business operations of carriers. |
| Verizon | <p>1. Denial of Effective Service Appeal –</p> <ul style="list-style-type: none"> ▪ Beyond City's purview and creates impermissible burden on federal statutory rights. ▪ Confidentiality of submittal requirements not guaranteed under Public Records Act. <p>Recommendation: Remove Section</p> |
| | <p>2. Public ROW and Utility Easement –</p> <ul style="list-style-type: none"> ▪ Section 230.96(E)(1)(g) requirement for franchise or lease agreement does not comply with PUC Sec. 7901. <p>Recommendation: Clarify that a lease is required only for use of City-owned structures within the ROW, but not for the use of the ROW itself.</p> <ul style="list-style-type: none"> ▪ Section 230.96(G)(13) requirement for franchise agreement would violate <i>Williams Communications, LLC v. City of Riverside (2003)</i> and PUC Section 7901 because wireless telephone providers are exempt from any local franchise agreements. |
| | <p>3. CUP Requirements –</p> <ul style="list-style-type: none"> ▪ Opposed to expansion of WCF categories that require a CUP. |

| | |
|-------|---|
| | <ul style="list-style-type: none"> ▪ Section 230.96(E) provision to allow re-evaluation of WCF classification creates uncertainty in the process contrary to the Permit Streamlining Act. ▪ Section 230.96(E)(1)(i) creates an open-ended list of submission requirements. <p>Recommendation: Don't replace existing code with a new, murky process.</p> |
| | 4. Like-for-like replacements should be permitted by right. There is no legitimate land use rationale for discretionary review in such circumstances. City risks intruding on the exclusive federal authority to regulate technical aspects of wireless services (<i>see Clarkstown, supra</i>). |
| | 5. City has no justification for requiring a carrier to submit its leases, particularly as leases often contain proprietary or confidential information. |
| NextG | 1. NextG incorporates its prior comments and briefings in the current litigation with the City setting forth its position regarding how the City's requirements violate PUC Sec. 7901. The draft ordinance does not remedy the fundamental problem that it would empower the City to deny NextG access to the public ROW in violation of the PUC. It also does not treat all users of public ROWs in an equivalent manner. |
| | 2. Section A (Purpose) – Delete unsubstantiated claims that WCFs have negative impacts “including visual blight and diminution of property value.” |
| | 3. Section B (Definitions) – Recommends clarifying several definitions and adding other definitions. |
| | <p>4. Section E(1) (Wireless Permit) –</p> <ul style="list-style-type: none"> ▪ The City needs to provide guidelines for satisfying the evidence requirements that a facility is compatible with the surrounding environment. ▪ Property owner authorization or evidence of fee ownership should not apply to WCFs in the public ROW. ▪ Co-location should be required where economically and technically feasible. ▪ The requirement to submit any other relevant information as required by the Director is vague and overbroad. <p>Section E(2) (Director Approval) –</p> <ul style="list-style-type: none"> ▪ The City's ability to re-evaluate a WCF provides the applicant with no certainty. ▪ Co-location should also include co-location on an existing utility pole. ▪ Why is the City intentionally calling out for different treatment of ground or utility mounted facilities? ▪ What are the required findings for Director approval? <p>Section E(3) (ZA Approval) – The City may want to consider administrative review for new ground or utility mounted facilities at low visibility sites.</p> <p>Section E(4)(Design Review) – DRB required for facilities in the public ROW ONLY if within 300 feet of a residential district.</p> |
| | <p>5. Section F (Denial of Effective Service appeal) –</p> <ul style="list-style-type: none"> ▪ Special fee is unreasonable. ▪ Request for monthly volume of calls, etc. inappropriate as it requires disclosure of confidential/proprietary information. ▪ City Attorney's ability to subpoena is unprecedented and hostile particularly to WCFs in the public ROW. |

| | |
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| | <p>6. Section G (Standards) –</p> <ul style="list-style-type: none"> ▪ Screening - Having a requirement that a ground or utility mounted facility blend into a building or other concealing structure is physically impossible. ▪ Monitoring – Delete sentence and replace with: The applicant shall provide the City with the property owner’s authorization to locate on his property prior to the issuance of a building permit. ▪ Landscaping – What is the relevance of vehicular traffic to landscaping? |
| | <p>7. Section K(3)(b) (Removal of Abandoned WCF) – The costs of removal, repair, and restoration should be reasonable. Replace “entire” with “reasonable”.</p> |
| CalWA | <ol style="list-style-type: none"> 1. Opposed to lack of distinct regulations for WCFs in the public ROW. Support regulations and ministerial process for WCFs in public ROW. 2. Opposed to intention to discourage WCFs in residential areas which are increasingly underserved due to fewer land lines and more telecommuting/home office. 3. Remove onerous requirements to justify need/gap for WCFs which is not required of any other land use or business and not under the purview of local planning/zoning. 4. Ordinance should present a more balanced and tolerant view of WCFs which are considered a Utility by definition in the CA Constitution. WCFs are critical to public safety, emergency services, healthcare, and our economy. The draft ordinance does not regulate WCFs fairly like other utilities. 5. The claim that WCFs have negative impacts on property values is unsubstantiated. There are studies that confirm no such impacts. 6. The application of additional aesthetic regulations can significantly impact the ability of WCFs to function properly thereby requiring more WCFs and adding costs. 7. There are numerous General Plan goals, objectives, and policies that speak to the importance of and support the continued development of WCFs. 8. Need a definition for Distributed Antenna System with separate development standards and administrative process. Only those that can’t meet the standards in the public ROW should be subject to Planning review. 9. Sec. D(1)(Exceptions) may be in conflict with Govt. Code Sec. 65850.6 and may need clarification. 10. Sec. E(1)(h)(Co-location) should be consistent with Govt. Code Sec. 65850, exempt completely stealth WCFs, and all co-locations should be ministerial. 11. Sec. E(2) DAS should be Director approval only. 12. Sec. E(2)(a)(Co-location) should allow for added height above existing. 13. Sec. E(2) Don’t require CUP if WCF is completely stealth even if ground/utility mounted. 14. Sec. E(3) Don’t require CUP if WCF is in public ROW. 15. Sec. E(3) Don’t remove existing facilities. Need definition of “obsolete”. 16. Sec. E(4) Don’t require DRB in public ROW. 17. Sec. F Denial of Effective Service appeal – check with attorney. 18. Sec. G(10) Requiring a copy of the lease agreement is irrelevant and should be deleted. 19. Sec. H Requirement for license, lease, franchise, etc. for city property – check with attorney. 20. Sec. I See comment #1 above. |